IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2427 OF 2005

Shri Shaukatali Mohammed Idris Khan ..Petitioner.
Aged 50 yrs, Occ.Service,
R/a. Bombay Dock Labour Board Colony,
Building No.7,Room NO. 267,
Cotton Green, Mumbai - 400 033.

Versus

1.The Maratha Mandir Co-operative ..Respondents.
Bank Ltd.,J.S.Rd,Thakurdwar,Mumbai-2
2.Shaikh Mohammed Rafique
3. Kashiprasad R. Dubey

Mr. S.A. Pawar for the Petitioner.
Mr. Vilas A. Sawant for the Respondent No.1.

CORAM : S. A. BOBDE, J.
DATED : 18TH AUGUST, 2005.

ORAL JUDGMENT :-

1. This petition is by a surety for a loan. By the petition the petitioner has challenged order of the Maharashtra State Co-operative Appellate Court, dismissing his Appeal. Admittedly, the petitioner stood surety, executed and signed the application in which his name was shown as a surety.

2. The courts below have found, as fact, that a cash credit facility to the extent of One lakh rupees, was given to the original borrower Shaikh Mohammed

Rafique. Initially, the facility was to the extent of Fifty thousand rupees; later on it was executed by another Fifty thousand rupees. The petitioner has signed at the subsequent stage as guarantor, vide Exh. D-3 before the trial court. The appellate court has found that the petitioner and the original borrower have signed as sureties. Even according to the learned counsel for the petitioner, the promissory note was executed for a sum of Rs.One lakh. Thus there is no dispute that the petitioner stood as a second surety for a cash credit facility to the extent of Rs.One lakh.

3. Mr. Pawar, the learned counsel for the petitioner, however, submitted that the court has committed an error of law in entertaining the dispute against the petitioner since a co-operative court has no jurisdiction in respect of a non-member, such as the petitioner. There is no merit in this contention in view of section 91(1)(d) which reads as follows:-

> 91. Disputes.-(1) Notwithstanding (anything contained) in any other law for the time being in force, any dispute touching the constitution, (elections of the committee or its offices other than elections of committees

of the specified societies including its

officer), conduct of general meetings, management or business of society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, (to the Co-operative Court) if both the parties thereto are one or other of the following :

(a) .....

(b) .....

(c).....

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;

(emphasis supplied)

4. The next contention of the learned counsel for the petitioner is that the surety bond was not executed in accordance with the restriction under section 45 of the Co-operative Societies Act, which reads as follows :-

> 45. Restrictions on other transactions with non-members.-- Save as is provided in this Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed.

This provision is liable to be read with Rule 47, which reads as follows :-

> 47. Restrictions on transactions with non-members.-- On the application of a member of any society or of his own motion, when it appears to the Registrar that it is necessary in the interest of the working of any particular society, to regulate or restrict transactions of such society with any non-member, the Registrar shall after giving an opportunity to the society of being heard, issue such directions as he may consider

> necessary regulating or restricting such transactions."

5. According to the learned counsel for the petitioner, the present contract of surety executed by the petitioner was not approved by the direction of the Registrar under Rule 47. This contention, in my view, is misconceived, since Rule 47 does not contemplate that the Registrar should issue direction case by case i.e. for each contract of surety which the Society enters into. In any case, there is nothing on record to show that the contract of surety was executed by the petitioner contrary to any specific provisions under Section 45 read with Rule 47 of the Rules, 1961. No specific regulation or restriction is pointed out.

6. The last contention of the learned counsel for the petitioner is based on section 44(1), which reads as follows:-

> 44. Regulation of loan making policy. --(1) No society shall make a loan to any person other than a member, or on the security of its own shares, or on the security of any person

who is not a member :

Provided that, with the special sanction of the Registrar, a society may make loan to another society.

7. It is clear on plain reading of the said section that the Co-operative Society is prohibited from granting a loan on the security of any person who is not a member. The aforesaid provision must be read as a whole. It is intended to prohibit a society from granting a "loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member". The placement of first ‘or’ occuring in the section appears to be a mistake. It does not provide an option for anything that precedes it. It appears to be the intention of the Legislature to prohibit the grant of a loan to any person who is not a member either on the security of its own shares, or on the security of any person who is not a member. Admittedly, the loan is not in favour of a non- member as the original borrower was a member of the society.

8. In the circumstances, there is no merit in the petition and the same is hereby dismissed.

DT.18.08.05 (S.A.BOBDE,J)

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